SCOTTISH HOME DEPARTMENT

The Extension of Compulsory After-Care to Additional Categories of Inmates and Prisoners

Report of the Scottish Advisory Council on the Treatment of Offenders

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* A member of the Committee on After-Care.
† The Marquess of Lothian resigned on 28th October, 1960.

27 QUEENSFERRY ROAD,
EDINBURGH, 4.
12*th December*, 1960.

SIR,

In January last you invited the Scottish Advisory Council on the Treatment of Offenders to examine the law relating to the care of offenders after they are discharged from custody and to consider whether it should be amended, particularly in order to extend compulsory after-care to additional categories. The committee appointed by the Council to consider this remit first undertook a survey of the organisation and methods of after-care work in Scotland. In July last, however, you told me that, with the preparation of new legislation in mind, you would welcome an early report on the extension of after-care to additional categories of prisoners. The committee accordingly turned its attention to this part of the remit and submitted to the Advisory Council a report on the extension of statutory after-care and on certain aspects of post-release supervision of discharged persons.

The Advisory Council endorsed the committee's report and I have the honour, on behalf of the Council, to submit it to you.

To complete its remit the committee will prepare, for the consideration of the Advisory Council, a further report on the organisation and scope of after-care work in Scotland. So far as can be foreseen at present, recommendations on these matters are not likely to require new legislation.

I am, Sir,

Your obedient Servant,

(Signed) HARALD R. LESLIE

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Report on the Extension of Compulsory After-Care to Additional Categories of Inmates and Prisoners

Appointment and Remit

1. In January, 1960, the Secretary of State asked the Scottish Advisory Council on the Treatment of Offenders "to examine the law relating to the care of offenders after their discharge from prisons, borstal institutions and detention centres, and to consider whether it should be amended, particularly in order to extend compulsory after-care to additional categories". We were appointed by the Advisory Council in February to consider this remit.

2. We now submit a first report on the extension of compulsory after-care to additional categories, a subject which we understand that the Secretary of State wishes to consider with a view to including appropriate provisions in the criminal justice legislation which, as now announced, will be laid before Parliament in the 1960-61 session.

3. We have also given some consideration to the organisation and scope of after-care work in Scotland, including such matters as the methods of after-care which are followed and the human needs of persons returning to society after penal confinement, and we propose to submit recommendations on these matters in a subsequent report. We do not expect—at this stage at least—that these recommendations will involve legislation. We shall include a statement of the meetings we have held and the witnesses we have heard in our second report.

The Term "After-care"

4. The only statutory use of the term "after-care" is in section 18 of the Prisons (Scotland) Act, 1952, which provides for the appointment by the Secretary of State of the After Care Council, the members of which are to be "persons interested in the moral and social welfare of offenders". Persons released from borstal or prison on licence are required to be under the Council's supervision, and it also undertakes other duties in connection with the after-care of offenders, as required by the Secretary of State. (These are explained in paragraph 18.) "After-Care" and "supervision" are not, however, defined in the Act, and nothing is laid down as to what should be done for or by a person under supervision or on licence. The form of licence given to discharged borstal inmates and to certain classes (as explained below) of discharged prisoners includes a condition that the released person shall comply with such instructions as he may receive from the After Care Council. It is by virtue of this condition that such actual measures as the appointment of guardians, the finding of accommodation, and the placing in employment, can be applied to persons who are subject to compulsory after-care.

5. In this report the term "compulsory after-care" is used as meaning the supervision for a period of a released person by an officer of the After Care Council, or other authorised body or person, and as imposing an obligation on the released person, under pain of certain sanctions for refusal, to comply for a

specified period with any conditions attached to the period of supervision. We note that the Prisons (Scotland) Act, 1952, appears to treat the terms "after-care" and "supervision" as interchangeable; we propose to examine in our later report what obligations and benefits after-care should entail.

PERSONS NOW SUBJECT TO COMPULSORY AFTER-CARE

6. At the present time the following categories of persons are under post-release supervision or on licence for specified periods and may be recalled to custody, for varying periods, for failure to comply with the licence or supervision conditions. (Persons sentenced to detention in a detention centre are not at present liable to compulsory after-care.)

Borstal inmates

7. By section 33(3) of the Prisons (Scotland) Act, 1952, a borstal inmate shall on release be under the supervision, for one year from the date of release or to a date three years from the date of sentence if this is earlier, of such society or person as may be specified in a notice given to him by the Secretary of State. This notice may specify requirements with which he must comply while under supervision. Any of these requirements may be modified or cancelled by the Secretary of State, who has power also to order at any time that the released person shall cease to be under supervision. Failure to comply may lead to the recall of the released person on an order by the Secretary of State, to a borstal institution for a maximum period of one year. After the recall period has been served (the average recall period is at present about five months) the inmate is again released on licence, and it is usual to require that he be again under the supervision of a specified society. Supervision may not be continued beyond three years from the date of the original sentence.

Young prisoners

8. By section 20(2) of the Prisons (Scotland) Act, 1952, a person who was under 21 at the start of his sentence may, if the Secretary of State directs, be released on licence on the date on which he would, with remission, have been released in ordinary course. If no direction is made the young person is released unconditionally. At present, nearly all young prisoners serving sentences of less than six months are released unconditionally, but in special cases a young prisoner serving less than that period may be released on licence. A young prisoner released on licence must be supervised by a society or person specified in the licence for the period to the expiration of his sentence, i.e. for the period of sentence remitted, and during that period he must comply with such other requirements as may be specified in the licence. These requirements may be modified or cancelled at any time by the Secretary of State. The maximum period of supervision is one-third of the sentence. Failure to comply with any of the requirements renders the released young prisoner liable to recall to prison by the Secretary of State for a period up to the date of expiration of his sentence. If he is then released before the date of expiration of his sentence he must again accept

supervision. A young prisoner who, because of misconduct in prison, had forfeited all his remission and on the date of his release had completed his sentence, would be liberated unconditionally.

Corrective trainees

9. By section 21(1) of the Criminal Justice (Scotland) Act, 1949, a sentence of corrective training is for a minimum of two years and a maximum of four years. The sentence may be imposed on a person not less than 21 who has been convicted, on indictment, of an offence punishable with imprisonment for two years or more provided he has been convicted on at least two previous occasions since he was 17 of offences punishable, on indictment, with a sentence of two years' imprisonment or more. The court must be satisfied that it is expedient for his reformation and the prevention of crime that he should receive "training of a corrective character for a substantial time followed by a period of supervision if released . . . . . before the expiry of his sentence ".

10. By section 19(1) of the Prisons (Scotland) Act, 1952, a corrective trainee may be released on licence by the Secretary of State in accordance with the Prisons (Scotland) Rules, 1952. These provide that a corrective trainee becomes eligible for release on licence when he has served two-thirds of his sentence, but power is given to the Secretary of State to release him at any time. He must comply with such requirements as may, under section 19(3) of the Act, be specified in the licence, and if the Secretary of State thinks it expedient, the trainee may be required—and invariably is required—to be under the supervision of a specified society or person. For failure to comply with any of the specified requirements he may be recalled to prison; if released before the expiration of his sentence he may again be made liable to supervision.

Preventive detention prisoners

11. A sentence of preventive detention, for a period not less than five nor more than fourteen years, may under section 21(2) of the Criminal Justice (Scotland) Act, 1949, be imposed on a person not less than 30 convicted in the High Court of Justiciary of an offence punishable with imprisonment of two years or more. To qualify for the sentence of preventive detention the convicted person must have been convicted on indictment, on at least three previous occasions since he attained the age of 17, for offences punishable with imprisonment for two years or more, and sentenced on at least two of these occasions to borstal training, imprisonment or corrective training. Before imposing a sentence of preventive detention the court must be satisfied that it is expedient for the protection of the public that the convicted person should be detained in custody for a substantial time, to be followed by a period of supervision if released on licence before the expiry of his sentence. At the end of October, 1960, only three men were serving sentences of preventive detention in Scotland.

12. By section 19(1) of the Prisons (Scotland) Act, 1952, a preventive detainee may be released on licence in accordance with the Prisons (Scotland) Rules, 1952. These Rules provide that a sentence of preventive detention shall be served in three stages. A detainee who reaches the third stage becomes eligible for release on licence after serving two-thirds of his sentence, provided he has been in stage three

for at least six months ; if he has not been advanced heyond stage two he must serve five-sixths of his sentence before hecoming eligible for release. If the Secretary of State thinks it expedient the released preventive detainee may, under section 19(3) of the Act, be put under the supervision of a specified society or person. The licence may specify other requirements to be ohserved, and these may be modified or cancelled by the Secretary of State at any time. He may he recalled to prison until the expiration of his sentence if he fails to comply with any of the specified requirements. If again released on licence before his sentence expires he may again have to comply with conditions.

Prisoners released after serving a sentence of life imprisonment

13. A person serving a sentence of life imprisonment may under section 21 of the Prisons (Scotland) Act, 1952, be released on licence by the Secretary of State " subject to compliance with such conditions, if any, as the Secretary of State may from time to time determine ". He may he recalled by the Secretary of State and again released on conditional licence. Where conditions are imposed it is usual to include one requiring the released person to he under the supervision of the After Care Council for the period the licence is in force or until the requirement is cancelled.

NOTIFICATION OF ADDRESS BY CERTAIN PRISONERS

14. Under section 22 of the Criminal Justice (Scotland) Act, 1949, as read with section 23(1) of the Prisons (Scotland) Act, 1952, a person convicted on indictment of an offence punishable with imprisonment for a term of two years or more, who has been convicted on at least two previous occasions and sentenced to borstal training or imprisonment or who has been previously sentenced to corrective training, shall, if he is sentenced to a term of imprisonment of twelve months or more, he under obligation on his discharge from prison to inform the appointed society of his address, and to continue to do so from time to time for a period of twelve months. If he fails to do this the society must give notice to the Secretary of State, and from the date of that notice the offender hecomes liable to the provisions of the First Schedule to the Prisons (Scotland) Act, 1952. He is then required to register at an appointed police station and to report monthly, as the police may direct. If he fails to report without reasonahle excuse he commits an offence for which there is a maximum of six months' imprisonment.

15. There is no statutory obligation to provide after-care for a prisoner who is required only to report his address. He is, however, encouraged to accept after-care voluntarily.

CONDITIONS OF LICENCE AND SUPERVISION

16. There is no statutory direction as to the kind of requirements or conditions that should he specified in the licence form or as to the scope and degree of super-

vision to he exercised by the supervising society or person. The notification given to a horstal inmate on release requires him, for the period of supervision, to be under the supervision of the After Care Council ; not to change his address without first obtaining the consent of the Council ; to ohey such instructions as he may receive from the After Care Council ; to he punctual and regular in attendance at employment ; to abstain from violation of the law ; and not to associate with persons of had character. Somewhat similar conditions are specified in the licence form which is given to released young prisoners, corrective trainees and preventive detainees.

SUMMARY OF STATUTORY AFTER-CARE PROVISIONS

17. For convenience, the main provisions described in paragraphs 7-12 above are set out in tahulated form helow. In the last column are shown the numhers in the different categories actually heing supervised on 1st October, 1960 :

Category	Earliest time of release	Maximum period of supervision or licence	Maximum period of recall	Number under post-release supervision on 1.10.60
Borstal Inmates	Normally after 15 months' training	1 year from release, or up to 3 years from date of sentence if earlier	1 year	422*
Young Prisoners under 21†	After ⅓rds of sentence	⅓rd of sentence	Up to completion of sentence	47
Corrective Trainees	Normally after ⅔rds of sentence	Normally ⅓rd of sentence	do.	5
Preventive Detainees	After ⅔rds or ⅘ths of sentence	Remainder of sentence	do.	4

* In addition, some 60 persons are supervised on behalf of the English Central After-Care Association.
† Release on licence applies in practice only if serving six months or more.

OTHER PERSONS WHO MAY RECEIVE AFTER-CARE

From the After Care Council

18. The " other duties in connection with the after-care of offenders " that the Secretary of State has required the After Care Council to carry out, as explained in paragraph 4 ahove, entail the post-release supervision of—

(a) young prisoners under 21 not released on licence (i.e. those serving sentences of less than six months) ;

(b) prisoners under 25 who, having been nominated by Governors of prisons for interview hy officers of the Council, are prepared to accept post-release assistance ;

(c) prisoners released from the open prison at Penninghame ;

(d) prisoners released after serving a sentence of three years or more ;

(e) prisoners released on licence, and subject to conditions, after serving a sentence of life imprisonment.

Apart from those in (e) above, acceptance of post-release assistance by a prisoner in these groups is entirely voluntary ; he may not be recalled to prison or have any other sanction applied to him for subsequent refusal to co-operate with the officers of the Council, and no period of supervision can be laid down. We understand that the addition of detention centre inmates to the above list is being considered.

From the Discharged Prisoners' Aid Societies

19. Any discharged prisoner may apply (without being required to observe any statutory or other conditions) for post-release assistance from the Discharged Prisoners' Aid Societies. In practice most of those they help are persons who are not under the care of the After Care Council. These are societies approved by the Secretary of State under section 18(4) of the Prisons (Scotland) Act, 1952, and formed, in the words of the Act, " for the purpose of finding employment for discharged prisoners and enabling them by loans and grants of money to live by honest labour ". There are eight such societies in Scotland, all but one of which carry out their after-care functions through part-time agents. They receive from the state grants equal to half their approved expenditure ; for the rest of their income they depend on voluntary contributions and interest from investments. The societies have formed a national organisation, the Scottish Association of Discharged Prisoners' Aid Societies, which acts as a co-ordinating body concerned primarily with policy and national appeals. We shall discuss the place of these societies in a modern scheme of after-care in our second report.

EXISTING PATTERN OF SELECTION FOR AFTER-CARE

20. The aim of after-care is no doubt to protect society by helping the offender to re-establish himself so that he does not fall into crime again. It is, however, difficult to trace any guiding principle in the existing pattern of selection as described in paragraphs 17-18 above by which after-care is applied compulsorily, or made available on a voluntary basis to certain categories of prisoner. The arrangements would rather appear to have grown up piecemeal. The periods for which offenders receive after-care also do not appear to be very effectively related to its objects. In general, the view appears to have been taken that a person released on licence before the end of his sentence should not be subject to supervision beyond the date on which the sentence expires. This has the odd result that the more remission a prisoner loses by misconduct, the shorter his period on licence. That is to say, in cases where rehabilitation might be expected to be particularly difficult the time available for after-care is cut down. Apart from such special cases, it seems to us that if the period of after-care is based arithmetically on the period of sentence it is unlikely to bear much relation to the prisoner's individual needs, to the time required for after-care to be effective, or to the need of ensuring, in the public interest, that there may be adequate opportunity given to the welfare staff to do what they can to get the man to stand again on his own feet. It will be very seldom that permanent good can be done

in this field under six months, and for assistance to be withdrawn from a discharged person after, perhaps, a matter of weeks, must all too often mean a sorry waste of effort.

21. We are therefore satisfied that a statutory period of after-care must normally be one entirely independent of the particular prisoner's period of remission as determined by his length of sentence and his conduct in prison—good conduct while in custody does not necessarily remove the need for supervision after release. It must in our view be fixed solely with the effectiveness of after-care in view.

COMPULSORY OR VOLUNTARY AFTER-CARE

22. There is, of course, an element of contradiction in the idea of "compulsory after-care". No man can really be helped against his will and a prisoner who resented the conditions attached to after-care could effectively enough go through the motions of co-operation without deriving any benefit. There is no doubt that where after-care is at least voluntarily accepted, the chances of success are significantly enhanced. We cannot be satisfied, however, that the type of prisoner most in need of after-care would always willingly ask for it. He might be motivated by misplaced pride, by reluctance to appear to be currying favour "with the authorities", or by a genuine inability to realise his own plight. Even of those who might while in prison opt for voluntary after-care, a considerable number, we have been assured, would on release find any kind of supervision conditions irksome and would cease to co-operate. This would involve great wastage of time and effort on the part of the already burdened after-care personnel. We therefore conclude that any effective system of after-care must depend on a statutory obligation on the prisoner or inmate to accept help, the value of which, we feel satisfied, will be fully explained to him by the staff of the prison or institution before his release.

23. Nevertheless, we do not consider that the work of the After Care Council should be confined to assisting those who are statutorily placed under its supervision. Ideally, all discharged prisoners and inmates might be required to accept the Council's supervision and help. This is manifestly impossible at the present time, and compulsory after-care must therefore be put on some kind of selective basis. But we feel that, over and above the after-care of persons in the selected categories, there is scope for the Council to assist other discharged prisoners who are in special need of help and are willing to accept the discipline that any form of after-care must involve. We recognise that there is some danger of the resources of the after-care service being strained by an excessive volume of "voluntary" work, and that some method of selection to control it might become necessary. Nevertheless we recommend that the After Care Council should be given explicit power to assist discharged prisoners who voluntarily ask for assistance and accept supervision although they are not in the statutory categories which we propose later in this report.

SELECTION FOR AFTER-CARE

24. Since compulsory after-care for every person released from custody is not feasible, or indeed necessary, some scheme of selection must operate. Some

recommendations on this subject have already been made in the Advisory Council's reports on Custodial Sentences for Young Offenders (published in July, 1960) and on Short Sentences of Imprisonment (published in May, 1960). We refer to the effect of our own proposals on these recommendations in the summary of recommendations in paragraph 53 below.

(a) Method of Selection

25. We have considered a number of possible methods of selection, but in the end we have concluded that at present the one that is most satisfactory is the application of compulsory after-care to categories of inmates and prisoners clearly specified in statute. We refer below to the other possibilities we have discussed:

(i) *Selection by the Court*

It is arguable, on the view that compulsory after-care, where it is appropriate, is part of the sentence imposed, that the court should select the offenders who would be likely to benefit from after-care, and include an appropriate period in the sentence. But we doubt whether the court, except perhaps where the sentence was a very short one, could accurately assess at the time of imposing it what would be the offender's needs when the time came for him to leave prison. The court might, possibly, impose after-care by categories, but this would only be doing what could more effectively be done by Act of Parliament. Selection by the courts of individual cases would, we fear, result in much resentment on the part of those chosen for it; few would appreciate the court's reason for choosing them rather than others, and some would regard the period of after-care as an addition to the sentence. They would thus be in a bad frame of mind to start the training which now begins on admission to prison. Successful prison training must be a favourable factor for resettlement after release, but if the prisoner started it with a feeling of resentment his co-operation would be more difficult to secure. It seems to us better that after-care should be attached by the law to certain custodial sentences rather than that it should have an appearance—in the minds of some offenders—of being an additional punitive element that courts may add to the normal sentence at their discretion.

(ii) *Selection by prison staff, or by a prison board, or by the Secretary of State*

The Governor of a prison and his senior staff, including the prison welfare officer, could theoretically choose deserving cases for after-care, or make recommendations to a board consisting of members of the visiting committee. As, however, the basis of selection would be in the main the prisoner's conduct and progress while in prison there might be a tendency to choose the man who simply avoided getting into trouble. It would, we think, be likely to create discontent among the body of prisoners to have the prison staff, or any board acting on their advice, choose certain men as apparently better, or worse, post-release risks than others. This would certainly be discouraging to the prisoner who might have welcomed after-care and who was not chosen, but conversely, would encourage the prisoner who did not want supervision to behave in such a way as not to be selected or recommended. In the end, the

Governor and his staff would he inclined to avoid the invidiousness of selection by recommending almost every prisoner, or none.

Placing the ultimate decision for selection on the Secretary of State might appear to remove the onus from the prison staff or prison hoard. The Secretary of State, however, would have to rely on reports from the prison and welfare staffs, and sooner or later this would he known to the prisoners. All the undesirahle consequences of sclection would still remain.

(iii) *Opting by prisoners, with earlier release*

The suggestion that a prisoner who voluntarily accepted after-care might therehy qualify for earlier release, through, possibly, a higher rate of remission. is at first sight not unattractive. We have been assured, however, that every prisoner would be only too willing to make a show of accepting after-care if earlier relcase were the consequence. The proposal would inevitably involve some kind of selection, with the attendant evils, and we do not think the prison staff, or any other staff, should have in their hands what would amount to a wide power to confer earlier release. There would, moreover, he some risk that those who opted would he regarded by the others as seeking the favour of the prison staff, and some might opt in the expectation of more considerate treatment, for example, hy getting the hetter kind of johs in prison. Opting for after-care with any kind of reward attached must in our opinion he ruled out at the present time.

26. Any of these methods of selection involves consequences which we think are unacceptable. Other strong ohjections to these methods are the prisoner's uncertainty whether he will be selected and the difficulty of deciding the best time for selection. It is clearly undesirable that the prisoner should have to serve perhaps the greater part of his sentence not knowing whether he will get after-care help on release, or that the welfare staff should not know in good time which prisoners they will he required to help. If conduct in prison were a deciding consideration selection would tend to he left to a time near the date of release. If a prisoner is going to get after-care he should know it as soon as he starts his sentence.

27. We therefore conclude that the only method of avoiding the difficulties of individual selection and of ensuring that a prisoner is at no time in any douht where he stands in relation to after-care is to specify, in statute, the categories of prisoners to whom compulsory after-care is to he applied. By reason of the limited after-care resources at present availahle the numher of specified categories cannot be many, and we have considered an order of priority among them, having regard to what we have conceived to be the minimum function of after-care, namely, keeping a discharged prisoner from returning to prison.

(b) Proposed Categories

28. The claims of first offenders as a group (hy which we mean here offenders, of all ages, in prison for the first time) came to our notice at once. A sustained determination on the part of offenders, who have heen once in prison, not to see the inside of a prison again would make a substantial contribution to the solution of our penal prohlems ; indeed most of them do not come hack. Criminality, as we ordinarily use the term, can he ascribed to only a small proportion of these

people. The application of after-care for the limited purpose of preventing return to prison is thus clearly unnecessary for the larger part of the group. If the estimated twenty-five per cent likely to return could be confidently identified there would be everything to be said for concentrating strongly on that section. But even if predictive methods could be developed near to certainty there would remain, in the opinion of many people, an objection in principle to labelling, however discreetly, as a potential recidivist a person who was in prison for the first time. This consideration rules out, in our view, selection of any first offenders for inclusion in a special category at this stage.

29. The majority of first offenders are comparatively young people. It seems to us that it would be right, in trying to reduce the number of offenders who return to prison, to concentrate after-care efforts on young offenders. This is already the law as regards borstal inmates and we were glad to find that our own views on the value of compulsory after-care for young prisoners were endorsed by the evidence given by two of the senior Governors in Scotland after consultation with their colleagues. They were convinced that after the second and third return to prison the task of the after-care personnel becomes very much harder and that an enforced sojourn in prison from time to time becomes accepted by a number of these young men as part of their pattern of life. To have much chance of producing enduring good, after-care must be applied constructively before the offender has irretrievably committed himself to a delinquent course; and they thought this could well be done on an age basis.

30. At the other end of the scale we have also given special thought to the needs of the long-term prisoner. A person who has been in prison for, say, three years or more may well have broken nearly all his social ties, and his return to the community, whatever his offence, may present serious and individual problems. He therefore needs intensive and sustained after-care and we think that the help which the After Care Council may at the present time offer to this group on a voluntary basis (paragraph 18) should be made statutory.

31. From these considerations we proceed to recommend that the following categories of inmates and prisoners should be statutorily specified:

(1) *Inmates of Detention Centres*

We give after-care priority as a category to inmates released from a detention centre, the youngest group of offenders sentenced to custody in a penal institution. In doing so we are confirming the view expressed in the Council's Report on Custodial Sentences for Young Offenders that a period of supervision should follow discharge from a centre.

(2) *Borstal Inmates*

We recommend that borstal inmates should continue to be subject to supervision.

(3) *Young Persons under* 21 "*in custody*"

If the Council's recommendation in the Report on Custodial Sentences for Young Offenders that all young persons under 21 sentenced to a period in custody other than in a detention centre or a borstal institution should be accommodated in a "custodial centre" is implemented, we recommend that

persons sentenced to a term of three months or more in such a centre (other than inmates sent there for failure to pay a fine) should be under compulsory supervision after release. In the light of our general consideration we do not think that compulsory after-care should be applied to young persons under 21 sentenced to a term of less than three months in such a centre. We doubt if very many young persons (other than young defaulters and borstal inmates sent there on recall) will be sent to such an institution after adequate detention centre accommodation is available. Most of those who are sent for less than three months will probably serve very short terms and for them a period of compulsory after-care does not seem necessary.

(4) *Prisoners under* 26

(i) We think that the emphasis on youth discussed above might be secured by applying compulsory after-care to all prisoners who had not reached 26 on conviction. This is an arbitrary age-limit. We feel, however, that persons who have not reached that age have still a good chance to make a fresh start, and it is high enough to provide for that type of offender whose tardiness in reaching maturity may have been a factor in his falling into delinquency.

A very large number of young prisoners are at present in prison for very short periods. Many of those given short sentences are also first offenders, most of whom may in any case not return to prison. We therefore think that it would be an unwise dispersal of resources to apply compulsory after-care to all prisoners under 26 and we suggest that those serving sentences of less than three months should be excluded. The imposition of a sentence of three months or more on a comparatively young person will normally imply a fairly serious offence or the culmination of a series of minor offences, and it would be at this stage in a young prisoner's career that after-care might be of greatest benefit to him. A sentence of three months or over is also long enough to disrupt to some extent the young prisoner's family and social life, and assistance in settling down again should help him to make the transition.

(ii) *Prisoners serving sentences of three years or over*

For the reasons explained in paragraph 30 we propose that prisoners (whether over or under 26) who are serving a sentence of three years or over should be made subject to compulsory after-care.

(iii) *Prisoners serving less than three years*

The proposed limitation by reference to a three-year sentence is also an arbitrary one. In individual cases the difficulties of post-release re-adjustment may be no less after a rather shorter sentence, but as a category the prisoners serving less than three years must come after those serving the longer period. We should like to see eventually all prisoners serving sentences of a year or longer getting after-care, and we propose that legislative provision should be made to enable compulsory after-care to be applied progressively to prisoners—

(a) serving sentences of two years or over but less than three years ; and

(b) serving one year or over but less than two years.

32. We hope that categories (1), (3), (4)(i), and (4)(ii) above will be made subject to compulsory after-care as soon as the necessary legislation can be

enacted. It is, however, of the utmost importance that the after-care resources should not be overloaded because this is a field in which scamped work would defeat its own object. The legislation should therefore take a form which would enable the Secretary of State to bring different categories (including group 4(iii)), or specified groups in a particular category, within the scope of compulsory after-care at such times as, in all the circumstances, he thinks expedient.

33. These recommendations would have the effect meantime of leaving out of compulsory after-care only (a) inmates of a "custodial centre" serving less than three months, (b) prisoners under 26 serving less than three months and (c) prisoners 26 or over serving sentences of less than one year. We leave over the question of compulsory after-care for these classes for further consideration in the light of experience. We also keep in view the recommendation in paragraph 60 of the Council's Report in the Use of Short Sentences of Imprisonment by the Courts that a court should have power, when passing a short sentence of imprisonment, to require the offender to subject himself to compulsory after-care for a period.

PERIOD OF SUPERVISION FOLLOWING DISCHARGE

34. As we have explained in paragraph 20 above, we are firmly against linking the period of supervision following discharge, or the period of recall, in any way to the length of sentence or the amount of remission granted. Positive after-care is not just a matter of finding a man a job and leaving him to fend for himself thereafter. It must involve building up an understanding relationship between the after-care officer and the discharged person so that it may be possible for the latter to regain confidence, or develop new confidence, in the only context possible—a personal one. This cannot normally be accomplished in a matter of months.

35 We consider that for any prisoner or inmate of a "custodial centre" subject to compulsory after-care the period of supervision should be twelve months, and that during this period he should be under obligation to comply with such conditions as might be prescribed in a notice given to him on release. Where, however, the after-care authorities are satisfied that it would be in a discharged person's best interest that the period of supervision be cancelled or curtailed, or the conditions modified, the Secretary of State should be able to cancel, curtail or modify.

36. The period of supervision for released borstal inmates should be a standard period of twelve months (the normal period under existing practice). They, too, should be obliged to comply with such conditions as might be prescribed. The Secretary of State should have power to cancel or curtail the period of supervision, and to modify the conditions, on receiving a recommendation from the after-care authorities.

37. For inmates of a detention centre we recommend post-release conditional supervision for a period of six months, with a like power to the Secretary of State to cancel or curtail the period or to modify the conditions. This was the period recommended in the Council's Report on Custodial Sentences for Young Offenders. We think that, having regard to the type of young person concerned and the length of the sentence, a longer period is not required.

PENALTY FOR BREACH OF CONDITIONS OF SUPERVISION

38. Compulsory after-care implies sanctions to ensure observance by the discharged person of the conditions of his post-release supervision. The present sanction is recall, on an order of the Secretary of State, to a borstal institution for a period which may be up to a year, or to prison for a period between the date of being taken again into custody and the date of expiration of sentence. The recalled person may be released before expiration of this period and may, if necessary, again be recalled, provided his original sentence has not expired.

39. We consider that the penalty to which a discharged person may be subjected, like the period of supervision, should be unrelated in any way to the period of remission of the date of expiration of sentence. At present two persons recalled for the same kind of breach of conditions may have to serve very different periods in further custody. This is, we think, quite wrong. Recall is initially a penal measure, and if it is decided, after considering all the circumstances of a particular case, that the issue of an order of recall is justified, the recall period for which the offender is liable to remain in custody should be a standard one. It should not, however, be out of scale with the period of supervision. We think that for discharged prisoners, borstal inmates, and inmates of a "custodial centre", in respect of whom we have recommended a supervision period of twelve months, the period of recall should be a standard one of three months from the date of being taken again into custody, and for inmates discharged from a detention centre a period of four weeks from the date of being taken again into custody.

40. In some cases this would mean that a person who is recalled to custody for breach of conditions of supervision would be required to serve a period of recall longer than the remission he earned on his period in custody. At first blush this may appear unjust; but the effect of any system of compulsory after-care must be to replace the existing conception of a simple custodial sentence on completion of which the offender has "learned his lesson" by a composite sentence consisting of detention in custody followed by supervision coupled with a liability to recall. If it is accepted that such an arrangement offers the best hope of rehabilitating the offender and is therefore in his best interests and those of society, no correlation need be looked for between the period of liability to recall and the remission which may be earned on the period in custody.

41. Nevertheless there will probably be cases where a recalled person's conduct in custody, or further information about his circumstances, would warrant release before completion of the standard period, and we suggest that the Secretary of State should be able to authorise earlier release on representations to this effect by the visiting committee. The visiting committee should be required to review the case of each recalled person, within twenty-one days in the case of prisoners, borstal inmates and inmates of a "custodial centre" and within fourteen days in the case of detention centre inmates, to see if a recommendation for earlier release should be put forward.

42. At present the unhappy duty of recalling persons who are in breach of conditions of supervision is laid on the Secretary of State. This can be represented as a decision by the executive in relation to a person whose sentence has not yet expired and it has been objected that its effect is to return such a person, without the safeguards of a further court appearance and without the right of appeal, to

penal custody for what may be a considerable period. The breach of condition may not be so serious as to render the offender liable to a custodial sentence ; if it were he would normally be prosecuted. The Secretary of State, who imposes the conditions, may appear to be judge in what, in effect, is his own cause.

43. We have carefully considered these objections, but it seems to us that the difficulty is more apparent tban real. Tbere is no question of a new custodial sentence, as, if our recommendations are accepted, liability to recall will be part of the composite sentence imposed on tbe categories of offenders to whom the recommendations apply. Moreover, tbe purpose of recall should not be simply to punisb tbe person receiving after-care ; regard must be had to the hope that further institutional training will improve his prospects of eventual rehabilitation. We are not aware of any complaints about the recall by the Secretary of State of borstal inmates released subject to supervision, and it seems clear to us that when the arrangements for compulsory after-care are extended as we propose in this report, recall of released prisoners or inmates should only be ordered where the Secretary of State and the After Care Council, who will be responsible for the welfare of persons under supervision, are satisfied that it is necessary in order to further the progress of the person concerned.

44. Another course would be the recall of a person who is in breach of his conditions of supervision only on tbe order of the court. This would avoid the objections to recall by the executive ; but as we have indicated above, we think that tbese are more apparent than real. The courts, of course, have powers to deal with probationers who have failed to comply with the requirements of a probation order, including a power to sentence for the offence in respect of which the probation order was made. It seems to us, however, that the circumstances are materially different. A probation order is made only after the offender has undertaken to comply with the requirements which the court proposes to lay down ; it is an agreement between the court and the probationer, in virtue of which the court does not impose a sentence for tbe offence. The probation officer responsible for his supervision acts on behalf of the court, and it is for the court to decide whether the conditions it has itself imposed have been observed. On the other hand, a person wbo has served a custodial sentence and is thereafter under supervision is at that stage within the care, not of the court, but of tbe Secretary of State.

45. There are some practical difficulties that might be advanced against bringing before the court persons whom it is desired to recall, such as the inevitable publicity and the possibility of divergent decisions. The most important objection tbat we see is that the more complicated the procedure of recall is made and the greater the number of consents required, tbe more difficult it would be for tbe after-care officer to control by tbe threat of recall a person who was disregarding his conditions of supervision. From the deterrent point of view, which cannot be ignored, we think that the threat of recall, which the person under supervision can be certain will be acted upon, is an important instrument of rehabilitation in the after-care officer's hands, and we do not think it should be weakened.

46. We conclude, therefore, that the sanction of recall to a period in custody, which we think cannot be dispensed with if compulsory after-care is to be fully effective, should be exercised by an order of the Secretary of State made on the recommendation of the After Care Council. In view of the increased number of

cases that will have to be considered if this report is accepted, we recommend that a standing committee of the Council should be constituted to advise the Secretary of State in this matter. We think this would protect the Secretary of State from an appearance of arbitrary action to enforce his own conditions of supervision.

NUMBERS IN CATEGORIES RECOMMENDED FOR COMPULSORY AFTER-CARE

47. If after-care had been applied in 1959 to the categories of prisoners and inmates that we have recommended for compulsory after-care, the number released to after-care would have been, approximately:

Detention centre inmates (estimate)	300
Borstal inmates	500
Prisoners under 21 serving three months or more (who might in future go to a "custodial centre")	370
Prisoners 21 and under 26 serving three months or more	900
Prisoners 26 or over serving three years or more	90
Prisoners 26 or over serving two years or over but less than three years	75
Prisoners 26 or over serving one year or over but less than two years	320

48. We estimate that to apply compulsory after-care to these categories on the basis of the above numbers an additional 24 after-care officers would be required. This estimate takes into account the number of inmates released in one year from the one detention centre now in operation in Scotland. If, as we understand, at least another three centres may eventually be set up, the number of inmates released in a year may be approximately 1,200 in place of the detention centre figure of 300 shown above.

REPORTING OF ADDRESSES BY PRISONERS SUBJECT TO SECTION 23 OF THE PRISONS (SCOTLAND) ACT, 1952

49. We have been unable to find any good ground for the continuance of the requirements imposed on certain offenders who have been sentenced to imprisonment (see paragraph 14) to report their address on discharge, and for twelve months thereafter, to an appointed society. The appointed society is always the After Care Council. The Council does no more than record the address intimated by the discharged prisoner; it has neither the power nor the resources to verify the address given, nor has it any authority to give after-care assistance to the discharged person. In the very few cases where a section 23 case applies for help—which is always given, short of financial assistance—there is of course no kind of sanction to oblige the man to accept employment found for him or to continue in it. The procedure for reporting a discharged prisoner who fails to notify his address, first to the Secretary of State and thereafter, if necessary, to the police, is cumbersome, and as the police cannot take any action if he fails sub-

sequently to report his address monthly at a police station unless they are satisfied that he had "no reasonable excuse" it must be seldom that the circumstances justify bringing the man before a court.

50. The original purpose of the provision, derived from the pre-1949 ticket-of-leave system, was to enable some record to be kept of the movements of certain men who appeared to be set in criminal ways. While the record could have been of use only to the police there were, we appreciate, good reasons why the discharged prisoner should not be made to keep in contact with the police. Contact with "an appointed society" seemed an acceptable compromise. We have, however, been informed that the record is of little, if any, assistance to the police, who are, moreover, put to a good deal of trouble for no useful result in applying the procedure laid down in the First Schedule to the Act of 1952. At the end of October, 1960, 370 discharged prisoners were reporting their addresses to the After Care Council.

51. We recommend that section 22 of the Criminal Justice (Scotland) Act, 1949, and section 23 of the Prisons (Scotland) Act, 1952, be repealed.

SENTENCES OF CORRECTIVE TRAINING, PREVENTIVE DETENTION AND LIFE IMPRISONMENT

52. We make no recommendation for amendment of the present law in regard to the release on licence, subject to specified requirements (which may include supervision), of persons sentenced to corrective training or preventive detention, nor in regard to the existing arrangements for the conditional release on licence of persons sentenced to a term of imprisonment for life. These are not ordinary sentences of imprisonment. Because of the special considerations that apply to the release of persons sentenced to corrective training or preventive detention we do not think that our recommendation in paragraph 21, that the period of post-release supervision should not be related to the length of sentence, is wholly applicable in such cases.

SUMMARY OF RECOMMENDATIONS

53. Our recommendations may be summarised as follows :

1. Any period of statutory after-care should normally be independent of length of sentence and of a particular prisoner's period of remission (paragraphs 20-21).

2. To be effective, after-care generally must be based on a statutory obligation on the discharged person to accept it (paragraph 22).

3. Statutory after-care must in present circumstances be applied on a selective basis (paragraph 23) ; the best method of selection is statutory specification of categories (paragraphs 25-27).

4. After-care help should not, however, be limited to prisoners in a specified category ; the After Care Council should be empowered to help prisoners who, although not liable to statutory after-care, are prepared to accept post-release after-care and supervision on a voluntary basis (pargaraph 23).

5. First offenders as a class should not be a statutory category at present (paragraph 28).

6. Young persons and persons serving long sentences are the classes which most need help on discbarge (paragrapbs 29 and 30).

7. The following categories sbould be specified for statutory after-care :

(a) inmates discbarged from a detention centre (as recommended in the Report on Custodial Sentences for Young Offenders) ;

(b) inmates discbarged from a borstal institution ;

(c) young persons under 21 serving three months or over in a " custodial centre " (ratber than, as recommended in the Report on Custodial Sentences for Young Offenders, all persons discbarged from such a centre) ;

(d) prisoners under 26 on conviction serving sentences of three months or over ;

(e) prisoners serving sentences of three years or over ;

(f) prisoners serving sentences of—

(i) two years or over but less than three years and

(ii) one year or over but less than two years (paragraph 31).

8. Classes of prisoners not at present recommended for inclusion in a compulsory category should later on be considered, in tbe light of experience, for compulsory after-care (paragrapb 33).

9. While the categories noted at (a) and (c) to (e) in recommendation No. 7 (those in category (b) are already subject to statutory supervision) sbould, if possible, be made subject to compulsory after-care as soon as legislation can be enacted, the Secretary of State should bave power, to avoid overtaxing after-care resources, to bring a particular category or a specified group within a category into compulsory after-care at sucb time as he thinks expedient (paragraph 32).

10. For inmates discharged from a detention centre the period of post-release conditional supervision sbould be six months from date of discbarge (as recommended in the Report on Custodial Sentences) but for all other categories in recommendation No. 7 it sbould be twelve months from date of discharge ; the Secretary of State should, bowever, bave power to terminate any period or modify tbe conditions of supervision at any time (paragrapbs 35-37).

11. Tbe period of recall sbould be, for inmates discharged from a detention centre, a standard one of four weeks (as recommended in tbe Report on Custodial Sentences) ; for inmates discharged from a " custodial centre " a standard one of three montbs (instead of for a period representing the amount of remission granted, as recommended in the Report on Custodial Sentences) ; and for all other categories a period of three montbs (paragraphs 38-39). Tbe Secretary of State should bave power to order earlier release on representations from the appropriate visiting committee wbo for this purpose sbould be required to consider, after a specified period in custody on recall, the case of eacb recalled person (paragraph 41).

12. An order of recall to a prison or institution for failure to comply with conditions of supervision sbould be made by the Secretary of State on the recommendation of a standing committee of the After Care Council (paragraphs 42-46).

13. Section 23 of the Prisons (Scotland) Act, 1952, and section 22 of the Criminal Justice (Scotland) Act, 1949, under which certain discharged prisoners are required to report their address for twelve months following discharge, should be repealed (paragraphs 49-50).

14. We make no recommendation for amendment of existing statutory provisions in regard to the release of persons sentenced to corrective training, preventive detention, or life imprisonment (paragraph 52).

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12*th December*, 1960

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